

Update on Fair Housing Law



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The Fair Housing Act, as Amended



- 42 U.S.C.A. § 3601

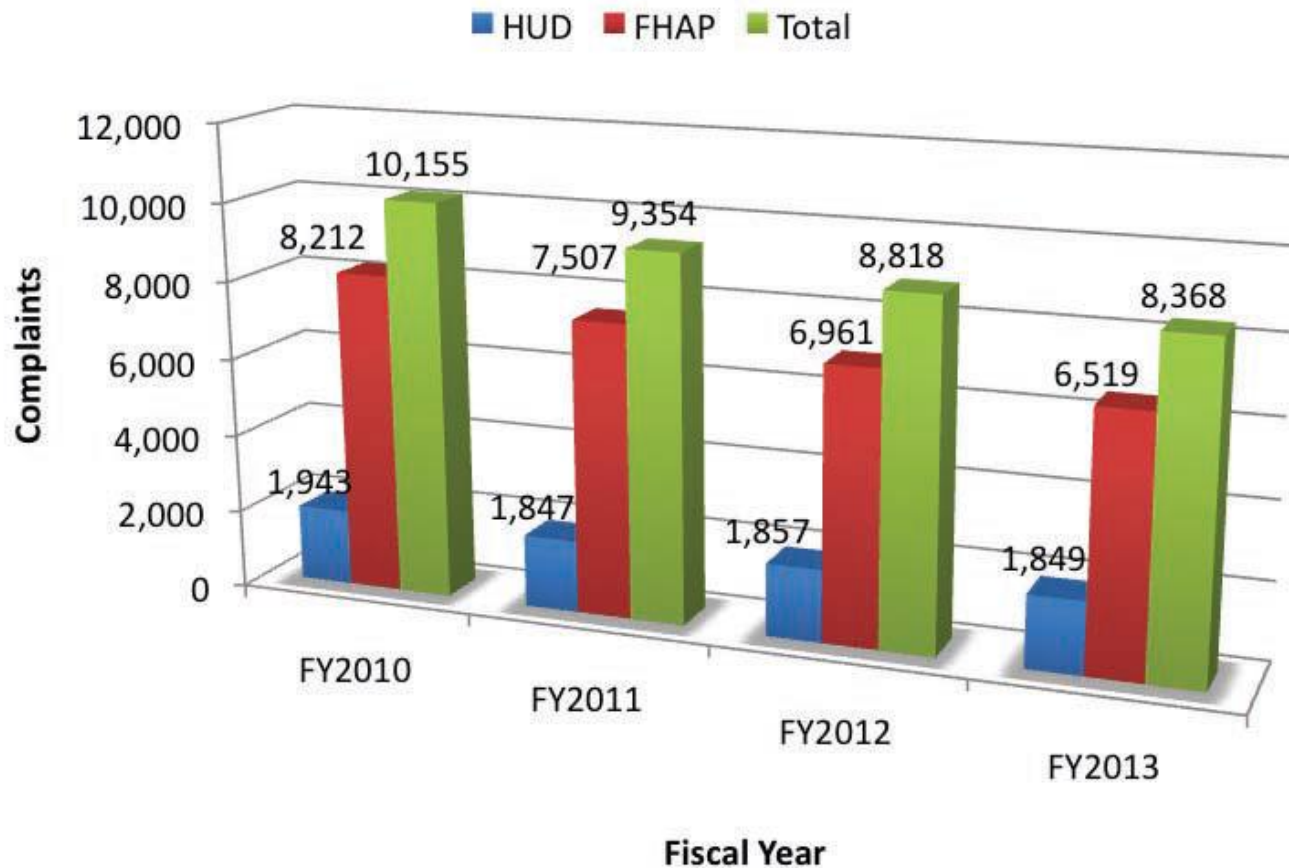
“It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”

Costs of Housing Discrimination



- Impedes access to neighborhoods with educational, employment, and wealth opportunities;
- Perpetuates safety disparities;
- Marginalizes protected class families, including families with children and individuals with disabilities.

The State of Fair Housing: Complaints Filed



Number of Complaints by Bases



Table 1: Bases of HUD and FHAP Complaints (FY 2010-FY 2013)

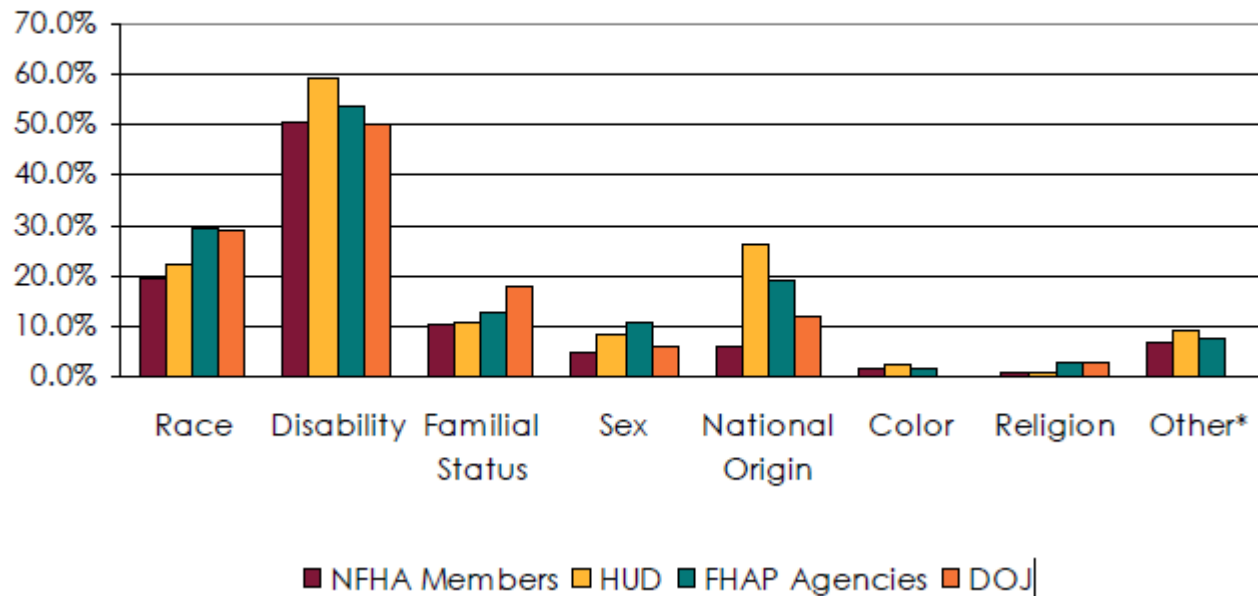
Basis	FY 2010		FY 2011		FY 2012		FY 2013	
	Number of Complaints	% of Total	Number of Complaints	% of Total	Number of Complaints	% of Total	Number of Complaints	% of Total
Disability	4,839	48%	4,498	48%	4,379	50%	4,429	53%
Race	3,483	34%	3,025	32%	2,597	29%	2,337	28%
Familial Status	1,560	15%	1,425	15%	1,301	15%	1,149	14%
National Origin	1,177	12%	1,195	13%	1,114	13%	1,040	12%
<i>National Origin- Hispanic or Latino</i>	722	7%	759	8%	691	8%	629	8%
Sex	1,139	11%	1,033	11%	1,067	12%	985	12%
Retaliation	707	7%	856	9%	970	11%	928	11%
Religion	287	3%	262	3%	229	3%	220	3%
Color	219	2%	185	2%	155	2%	170	2%
Number of Complaints Filed	10,155		9,354		8,818		8,368	

Source: TEAPOTS

Discrimination by Protected Class National Fair Housing Alliance



Figure 5. Discrimination by Protected Class



Rank and Order of Complaints



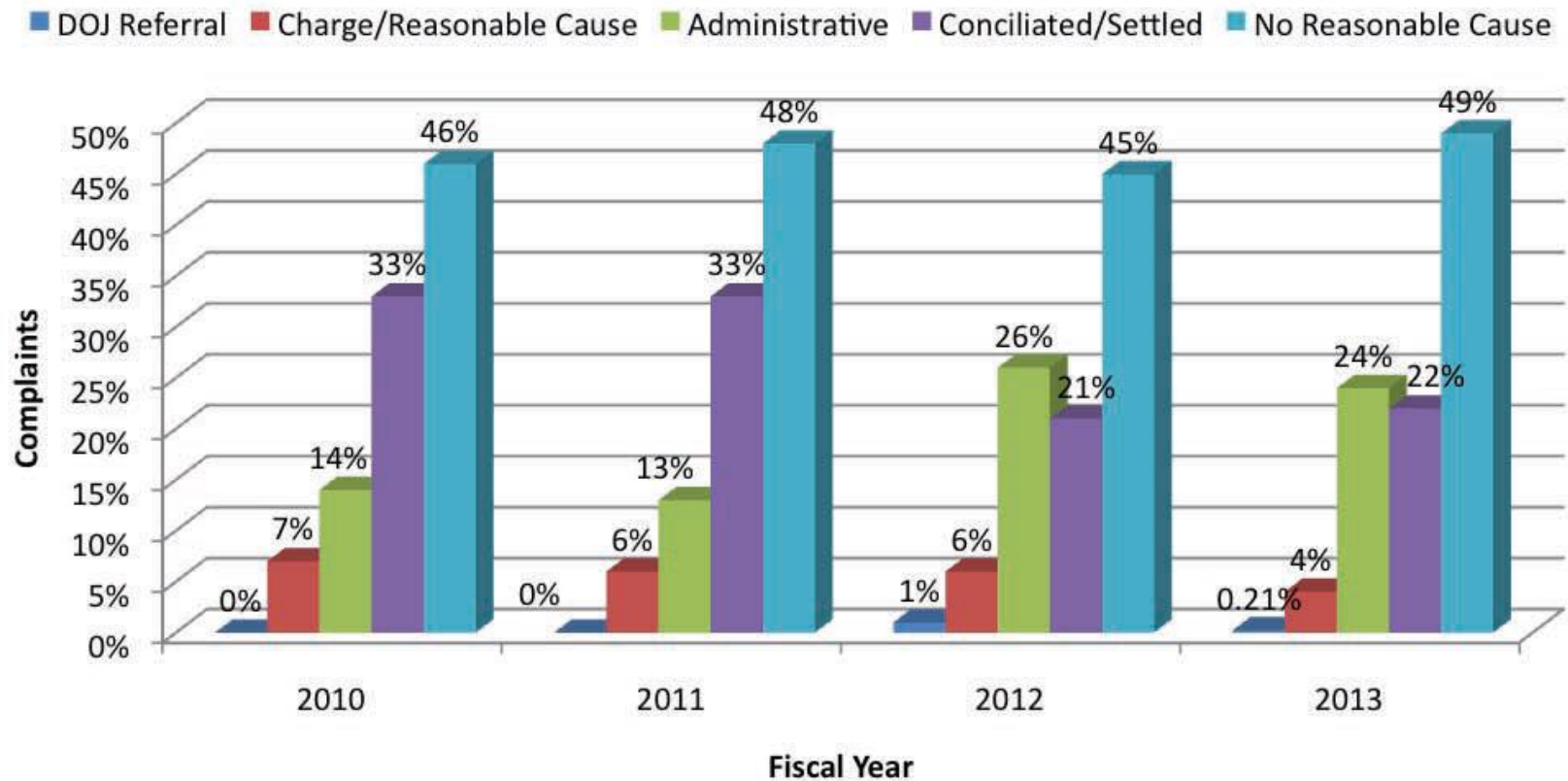
- Has remained constant the last three fiscal years.
- With 43% of the complaints, disability is the most common basis of complaints.
 - Includes: Reasonable Accommodation, Reasonable Modification, and accessible design and construction.
- Race is second, with 28%
- Familial status is third, 14%
- National Origin, 12%
 - This can be broken down further, to show Hispanic/Latino complaints at 8%
- Sex, 12%
- Religion, 3%

Most Common Issues in Complaints



- Roughly 2/3 of complaints allege discriminatory terms, conditions, privileges, services in the rental or sale of property – §§ 804(b) & 804(f)(2)
- Approximately 30% allege failure to make a reasonable accommodation – § 804(f)(3)(B)
- 27% allege refusal to rent – §§ 804(a) and 804(f)(1)
- 23% allege coercion or intimidation, threats, interference and retaliation - § 818

Complaint Outcomes



Update on LGBTQ Issues



- Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity
 - LGBT Final Rule, 77 Fed. Reg. 5662 (Feb. 3, 2012)
 - www.hud.gov/lgbthousingdiscrimination
- Review of Sexual Orientation and Gender Identity under the Fair Housing Act

Equal Access to Housing in HUD Programs



- The final rule, issued on February 3, 2012, went into effect on March 5, 2012.
- Applies to HUD-assisted and HUD-insured housing, including:
 - Public Housing, Section 8, Housing Choice Vouchers, Section 202, Section 811, CPD programs, CDBG, HOME, HOPWA, and Federal Housing Administration (FHA) mortgage insurance programs.

The Final Rule



- Defines sexual orientation (homosexuality, heterosexuality, or bisexuality) 24 CFR § 5.100
- Defines gender identity (means actual or perceived gender-related characteristics) 24 CFR § 5.100
- Clarifies the definition of family to include persons regardless of actual or perceived sexual orientation, gender identity or marital status. 24 CFR § 5.403
- The final rule also makes corresponding changes in the program regulations to the definitions of family

The Final Rule



- Defines “Household”: Household means all persons occupying a housing unit. The occupants may be a family, as defined in 24 CFR 5.403; two or more families living together; or any other group of related or unrelated persons who share living arrangements, regardless of actual or perceived, sexual orientation, gender identity, or marital status. 24 CFR 570.3

The Final Rule



- Adds a general equal access provision: Housing assisted by HUD or insured by FHA shall be made available without regard to actual or perceived sexual orientation, gender identity or marital status. 24 CFR § 5.105(a)(2)
- Prohibits inquiries regarding sexual orientation and gender identity for the purpose of determining eligibility. 24 CFR § 5.105(a)(2)(ii)
 - (with limited exceptions: emergency shelters with shared sleep space, determining number of bedrooms to which a household is entitled)
 - Individuals not prohibited from voluntarily self identifying

Federal Housing Administration Equal Access Provision



- Prohibits FHA-approved lenders from basing eligibility determinations for FHA-insured loans on actual or perceived sexual orientation and gender identity
- 24 CFR 203.33

Fair Housing Act



- Sexual orientation and gender identity are not explicitly protected classes under the federal Fair Housing Act
 - Protected classes under some state and local ordinances
 - List of jurisdictions with protections found here:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination
- However, ***sex discrimination based on nonconformity with gender stereotypes*** may be jurisdictional under the Fair Housing Act

Title VII



- Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) provides the narrow but important exception on “sex stereotyping,” established it is unlawful discrimination to take adverse actions against an employee on the basis of the employee’s failure to conform to gender norms (involved a woman who was not “feminine” enough for her supervisors, who advised her to wear make up and told her she was too macho).

Macy v. DOJ (EEOC Apr. 20, 2012)



- Plaintiff was a police detective who applied to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for a position at a crime lab, while presenting as a male.
- Informed the background check investigator that she was transitioning to female, and was told five days later that the position was no longer available.
- ATF argued that Title VII did not protect against transgender discrimination. EEOC determined the complaint, including claims on sex, gender identity, and sex stereotyping fell under Title VII, and should be processed.

<https://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt>

EEOC SEP



- EEOC adopted its current Strategic Enforcement Plan (SEP) in December 2012, which includes “coverage of lesbian, gay, bisexual and transgender individuals under Title VII’s sex discrimination provisions, as they may apply” as a top Commission enforcement policy.

https://www.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm

Baldwin v. Dept. Of Transportation (EEOC)

(7/15/15)



- Complainant believed he was denied a position at the Federal Aviation Administration because he was gay.
 - Commission held: Title VII's prohibition of sex discrimination means that employers may not "rely upon sex-based considerations" or take gender into account when making employment decisions. This applies equally in claims brought by lesbian, gay, and bisexual individuals under Title VII.
 - "In the case before us, we conclude that Complainant's claim of sexual orientation discrimination alleges that the Agency relied on sex-based considerations and took his sex into account in its employment decision regarding the permanent FLM position. Complainant, therefore, has stated a claim of sex discrimination. Indeed, we conclude that sexual orientation is inherently a "sex-based consideration," and an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII."
- <https://www.eeoc.gov/decisions/0120133080.pdf>

Jamal v. Saks & Co. (S.D. Tex.) (Filed 1/26/2015)



- Amicus Brief (statement of interest) – addresses the applicable scope of Title VII’s prohibitions of sex discrimination in employment.
- Plaintiff (a transgender woman) alleged she was harassed and discharged because of her sex/gender. Called by male pronouns, was told to adopt a more masculine appearance, told not to wear make up.
- EEOC argued that:
 - Title VII's prohibition on sex discrimination encompasses discrimination based on the failure to conform to gender expectations
 - Consideration of gender stereotypes is inherently part of what drives transgender discrimination

Fair Housing Act – Title VIII



- Thomas v. FHEO Region IV Director (N.D. Ala. 2015)
- Claimant filed suit against FHEO for not processing his claim which alleged he was discriminated against for not being gay. Not a petition under a theory of gender nonconformity, but rather that he was discriminated against because he conformed.
- Court outlined that HUD “has taken several steps to clarify and reinforce the fact that certain acts of discrimination based on sexual orientation are within its jurisdiction.”

Thomas v. FHEO continued



- Court noted:
 - HUD guidance indicating gender identity discrimination as gender discrimination
http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-139
 - The Final Equal Access Rule ensuring access to HUD programs for all regardless of sexual orientation or gender identity.
 - “Considering the deference due by the court to agency interpretations, HUD’s narrow tailoring of jurisdiction to discrimination based on sexual orientation to protections for gender stereotyping in this interpretation of the Fair Housing Act is a permissible reading of “sex.”

Settlement Agreement with Bank of America



- HUD received complaint alleging that borrowers at Bank of America seeking FHA insured loans were denied a loan based on marital status/sexual orientation.
- Settlement agreement included training on Equal Access Rule and provision of Rule to all loan originators, processors, and underwriters.

HUD v. In Toone Services, LLC



- Complainant, transgender woman, filed a complaint alleging that the housing provider discriminated against her by prohibiting her from wearing feminine attire in the public places on the property as it was “not the type of atmosphere we want to promote on private property” and by not renewing her “site service agreement” (property was an RV Park).
- Charge was filed August 15, 2013.
- Mediated Settlement Order filed 7/17/2014 – Updated RV Park rules to not discriminate based on sex or familial status, award of \$3,000 to one Complainant, and \$1,000 to a second Complainant

Additional Specific Cases



Familial Status Cases



- **U.S. v. Brisben**

- Defendant managed 8 multifamily properties in Kansas & Missouri, adopted rules and policies that required adult supervision of children under the age of 16 at all times, restricted the activities of children in the common areas of property (including prohibitions on the use of bicycles and sports equipment). \$100,000 victims fund, \$60,000 to the identified victim, and \$10,000 civil penalty.

<https://www.justice.gov/sites/default/files/crt/legacy/2015/03/31/brisbensettle.pdf>

- **Dumas v. Sunview Properties (S.D. Cal.)**

- Apartment complex maintained rules that prohibited playing with balls, bicycles, roller blades, and other toys on the property and required that all children were supervised by an adult. Settled for \$35,750.

<http://law.justia.com/cases/federal/district-courts/california/casdce/3:2013cv01425/417134/13/>

Race Cases



- **Fair Housing Justice Center v. Kara Realty LLC**
 - \$212,000 settlement. 4 African American testers were repeatedly lied to when they inquired about available units, while white applicants were shown and encouraged to rent apartments.
<http://www.fairhousingjustice.org/2014/03/05/opening-acts-newsletter-march-5-2014/>
- **U.S. v. Los Angeles County Sheriff's Department**
 - (race) (rental terms and conditions) Consent Decree May 2015, \$700,000 victims' fund; \$25,000 civil penalty, comprehensive injunctive relief. Link to complaint:
https://www.justice.gov/sites/default/files/crt/legacy/2015/04/29/antelope_valley_complaint_4-28-15.pdf Link to Consent Decree:
https://www.justice.gov/sites/default/files/crt/legacy/2015/04/29/antelope_agreement_4-28-15.pdf

Excerpts from U.S. v. LACSD Complaint



8 administrative requirements of the contract between HACoLA and voucher holders.

9 43. LASD-AV's enforcement of Section 8 targeted African-American
10 voucher holders.

11 44. LASD-AV deputies joined HACoLA investigators and acted
12 independently to pursue enforcement efforts at voucher program households, including
13 by intimidating, harassing, and facilitating the termination of voucher holders from the
14 program. LASD departed from ordinary procedures employed elsewhere in the county
15 by:

- 16 a. accompanying HACoLA on a disproportionately large percentage of
17 compliance checks in the Antelope Valley as compared to other areas of Los
18 Angeles County where HACoLA's and LASD's jurisdictions overlap;
- 19 b. sending deputies, sometimes as many as nine, on HACoLA compliance
20 checks of the homes of voucher holders in the absence of any legitimate
21 justification;
- 22 c. questioning voucher holders about their compliance with the voucher
23 program's rules;
- 24 d. referring voucher holders for criminal prosecution for voucher program
25 violations;
- 26 e. independently using law enforcement tools, such as probation and parole
27 checks and arrest warrants, to obtain information about voucher program
28 violations;

Excerpts from U.S. v. LACSD Complaint



Case 2:15-cv-03174 Document 1 Filed 04/28/15 Page 10 of 17 Page ID #:10

1 f. failing to properly issue *Miranda* warnings even when deputies had a
2 legitimate reason to enter voucher-holder homes; and

3 g. providing confidential information about voucher holders to third parties.

4 45. LASD deputies improperly comingled their law enforcement functions
5 with HACoLA's administrative process and participated in HACoLA investigations
6 without justification.

7 46. As a result of these practices, LASD deputies were able to interview
8 people and conduct searches before the individuals understood their rights, including
9 that they might be incriminating themselves by participating in the housing contract
10 compliance check.

11 47. LASD-AV deputies' questions often had no purpose other than to
12 substantiate voucher program violations. LASD deputies also used information
13 gathered during these administrative compliance checks to further criminal
14 investigations based solely on the voucher holders' alleged voucher program
15 violations.

16 48. LASD's role in the enforcement of the voucher program's rules was
17 motivated, at least in part, by the unsubstantiated perception among some members of
18 the Antelope Valley community, including public officials, press, residents and
19 deputies themselves, that African Americans in the voucher program had brought
20 increased crime to the region.

Disability Cases



- **HUD v. Community Redevelopment Agency of Los Angeles**
 - (disability) (terms and conditions – accessibility) Onsite compliance review revealed physical accessibility deficiencies in units and common areas. Contained non accessible: bathrooms, sinks, counters, routes. Voluntary Compliance Agreement \$2,800,000 to retrofit; \$500,000 for consultations. Sept. 2014 <http://nlihc.org/article/los-angeles-agency-signs-accessible-housing-voluntary-compliance-agreement>
- **Young v. District of Columbia Housing Authority**
 - \$350,000 for two individuals, the organization and attorney's fees, disability involving reasonable accommodation for communications with deaf tenants. <https://www.courtlistener.com/opinion/2658390/young-v-district-of-columbia-housing-authority/>
- **Oxford House, Inc. & Chris & Rob Properties, LLC. v. City of Scranton**
 - Settlement of \$100,000 for the complainant organizations, (disability) reasonable accommodation to zoning ordinance that was restricting group homes. <http://portal.hud.gov/hudportal/documents/huddoc?id=15Oxford.pdf>
 - <http://thetimes-tribune.com/news/scranton-pays-100-000-to-settle-claim-of-discrimination-against-people-with-disabilities-1.1876705>

Bank Cases



- **HUD v. Freedom Mortgage Corp**
 - (disability)(terms and conditions) Conciliation Agreement with \$104,000 to 69 aggrieved applicants.
http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-098
- **HUD v. Wells Fargo Bank**
 - (sex and familial status) (terms and conditions) Conciliation Agreement with \$5 mill victims fund, and \$160,000 to six identified complainants.
<http://portal.hud.gov/hudportal/documents/huddoc?id=14WellsFargoConciliation.pdf>
- **HUD v. Associated Bank, N.A.**
 - (race and national origin)(mortgage redlining) Conciliation Agreement with \$205,750,000 increased mortgage commitments in minority areas + other relief.
http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-064b

Sex Cases



- **Jennings v. Housing Authority of Baltimore City**
 - Included allegations that the HA violated the Act when one of the incidents taken into consideration when the Complainant's voucher was terminated was an incident of domestic violence. However, two other incidents considered did not involve domestic violence but other criminal activity.
<http://www.leagle.com/decision/In%20FDCO%2020150417903/JENNINGS%20v.%20HOUSING%20AUTHORITY%20OF%20BALTIMORE%20CITY>
- **ACLU & Briggs v. City of Norristown**
 - \$495,000 Conciliation Agreement with ACLU
 - Secretary Initiated Complaint was settled, Norristown must now publish a notice of repeal of its ordinance in the local newspaper; offer fair housing training to city and public safety officials; print and distribute a fair housing rights brochure that specifically encourages all tenants to call the police when they are in need of help; and work with a local domestic violence advocacy group to develop and promote an annual community service day or other activity to raise awareness of domestic violence.
 - http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-121
 - Victims v. nuisance ordinance. <https://www.aclu.org/blog/victory-town-will-no-longer-treat-domestic-violence-victims-nuisances>
 - <https://www.aclu.org/legal-document/briggs-v-borough-norristown-et-al-us-department-housing-and-urban-development?redirect=womens-rights/briggs-v-borough-norristown-et-al-us-department-housing-and-urban-development>

More information relating to Domestic Violence



HUD memo on VAWA – which provides protections for victims of domestic violence in public housing, but the Fair Housing Act may still be implicated.

- <http://portal.hud.gov/hudportal/documents/huddoc?id=11-domestic-violence-memo.pdf>
- “[T]he Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA) protects victims of domestic violence, dating violence, sexual assault and stalking.

VAWA provides that being a victim of domestic violence, dating violence, or stalking is not a basis for denial of assistance or admission to public or Section 8 tenant-based and project-based assisted housing. Further, incidents or threats of abuse will not be construed as serious or repeated violations of the lease or as other “good cause” for termination of the assistance, tenancy, or occupancy rights of a victim of abuse. Moreover, VAWA prohibits the termination of assistance, tenancy, or occupancy rights based on criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control if the tenant or immediate member of the tenant’s family is a victim of that domestic violence, dating violence, or stalking.¹⁸

Additional Resources



- <http://www.nationalfairhousing.org/LinkClick.aspx?fileticket=SYWmBgwpazA%3d&tabid=3917&mid=5321>
- <http://portal.hud.gov/hudportal/documents/huddoc?id=2012-13annreport.pdf>
- Joint Memo on Reasonable Accommodations:
<http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>
- Joint Memo on Reasonable Modifications:
http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf